

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

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MICROSTRATEGY SERVICES CORPORATION,	:	
	:	
Plaintiff,	:	
	:	
- against -	:	
	:	
OPENRISK, LLC,	:	Civil Action No. 1:14-cv-01244
	:	
Defendant.	:	
	:	
-----X	:	

JOINT STIPULATIONS OF UNCONTESTED FACTS

Plaintiff MicroStrategy Services Corporation and Defendant OpenRisk, LLC jointly submit the following stipulations of uncontested facts.

1. MicroStrategy and OpenRisk entered into a contract called a Cloud Intelligence Master Subscription Agreement on September 29, 2011
2. The entire contract consisted of the Cloud Intelligence Master Subscription Agreement and an Order Form entered into on September 29, 2011.
3. PX 004 is the OpenRisk Cloud Services Agreement.
4. The first quarterly payment under the OpenRisk Cloud Services Agreement for access to online services was due on January 1, 2012 and was for access to the MicroStrategy online services for the fourth quarter of 2011.
5. The OpenRisk Cloud Services Agreement defines “Term(s)” as “the period(s) during which a specified number of Users are granted access to use the Online Service pursuant to the Order Form(s).”
6. The OpenRisk Cloud Services Agreement states “You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms set forth in an

Order Form. Except as provided in paragraph 10, herein, all payment obligations are noncancellable.”

7. The OpenRisk Cloud Services Agreement defines “Initial Term” as “the initial period during which you are obligated to pay for the Online Services pursuant to an Order Form” and states that the “Initial Term will commence on the start date of the first Order Form entered into under this Agreement and will remain in effect for the period stated in the Order Form”

8. The OpenRisk Cloud Services Agreement states that “Either party may terminate an Order Form or reduce the level of access under it, effective only at the expiration of the then current Term, by notifying the other party in writing at least ninety (90) business days prior to the scheduled expiration date of the Term.”

9. The OpenRisk Cloud Services Agreement Order Form provides that the initial invoice for the initial set up fee and the initial quarterly invoice amount are as follows: \$15,000 due on or before October 31, 2011; \$15,000 due on or before November 30, 2011; and \$63,000 due on or before January 1, 2012.

10. The OpenRisk Cloud Services Agreement states that “[a]ny breach of your payment obligations . . . will be deemed a material breach of this Agreement.”

11. The OpenRisk Cloud Services Agreement provided “as between you [OpenRisk] and MicroStrategy, you [OpenRisk] will be and remain the owner of all rights, title and interest in and to all Customer Data-.”

12. The OpenRisk Cloud Services Agreement states that “You shall . . . notify MicroStrategy immediately after You learn of any unauthorized use of any password or account or any other known or suspected breach of the Online Service.”

13. In October 2011, OpenRisk was in negotiations with a potential investor named Marc Roston. Those negotiations came to an end on November 1, 2011. Neither Mr. Roston nor any company affiliated with Mr. Roston, including Spectant Group, LLC, ever acquired OpenRisk or any of its assets or contracts.

14. At all times relevant to this case, Jorge Jimenez was acting as an authorized agent of MicroStrategy.

15. Jordan Christopher was acting as an authorized agent of MicroStrategy in connection with the OpenRisk and Spectant Cloud Services Agreements.

16. Jordan Christopher was paid a commission in connection with the OpenRisk Cloud Services Agreement which was subject to recapture by MicroStrategy if OpenRisk missed a payment when due.

17. Jordan Christopher met with Craig Ott, OpenRisk's president, on October 10, 2011.

18. Jordan Christopher had known Shajy Mathai, OpenRisk's former officer, for several years.

19. On October 11, 2011, MicroStrategy notified Nitish Mathew and Shajy Mathai that it had created a cloud environment for OpenRisk, and made that notification by email using Mr. Mathew's and Mr. Mathai's openriskllc.com email addresses.

20. On October 12, 2011, Shajy Mathai responded to MicroStrategy's October 11 email using an openriskllc.com email address.

21. On or about October 13, 2011, MicroStrategy began to restore metadata and database dumps, which had been transferred to MicroStrategy's systems by OpenRisk's consultant Nitish Mathew, onto a MicroStrategy cloud environment created for OpenRisk and in

December 2011, MicroStrategy restored this information to a different cloud environment with the identification code C289 which had been established for Spectant at Spectant's request.

22. Jim Aylward sent the email that is PX 034 on 11/1/2011.

23. Jim Aylward sent the email that is PX 032 on 11/1/2011.

24. Jim Aylward sent the email that is PX 037 on 11/9/2011.

25. On December 13, 2011, OpenRisk's counsel sent a letter to MicroStrategy that is DX274.

26. The OpenRisk Cloud Services Agreement required OpenRisk to make the first quarterly payment of \$63,000 on January 1, 2012 which was for access to MicroStrategy's online services for the period October 1, 2011 through December 31, 2011.

27. OpenRisk did not make the \$63,000 quarterly payment due on January 1, 2012.

28. OpenRisk never made any payments under the OpenRisk Cloud Services Agreement

29. Shajy Mathai made a payment of \$15,000 on October 31, 2011 to MicroStrategy which MicroStrategy credited to OpenRisk's account with MicroStrategy.

30. Jordan Christopher did not inform OpenRisk of Mathai's October 31, 2011 payment and was aware at that time that Mathai had resigned from OpenRisk.

31. Spectant Group, LLC made a payment of \$15,000 to MicroStrategy on November 29, 2011 which MicroStrategy credited to OpenRisk's account with MicroStrategy.

32. MicroStrategy and Spectant entered into a Cloud Intelligence Master Subscription Agreement on January 9, 2012. Spectant signed that contract on January 3, 2012.

33. The entire contract with Spectant consisted of the Cloud Intelligence Master Subscription Agreement and an Order Form also entered into on January 9, 2012. DX Nos. 3 & 8 are the Spectant Cloud Services Agreement.

34. The Spectant Cloud Services Agreement required Spectant to make an initial invoice payment of \$63,000 on or before January 6, 2012.

35. In the Spectant Cloud Services Agreement, Spectant stated that it would not use MicroStrategy cloud services to “store or transmit material that infringes any copyright, trademark, patent, trade secret or other proprietary right of any entity or individual.”

36. On January 3, 2012, Spectant made a payment of \$63,000 to MicroStrategy which was for access to MicroStrategy’s online services for the fourth quarter of 2011.

37. On January 20, 2012, MicroStrategy sent to OpenRisk a Notice of Termination stating that “OpenRisk, LLC was contractually obligated to pay \$63,000 on or before January 1, 2012” and that “MicroStrategy has not received the required payment.” ..

38. OpenRisk did not make a payment in response to MicroStrategy’s January 20, 2012 letter.

39. On September 14, 2012, MicroStrategy sent to Spectant a Notice of Termination.

40. Spectant did not make a payment in response to MicroStrategy’s September 14, 2012 letter.

Dated: June 18, 2015

/s/ Ellen D. Marcus

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Respectfully submitted,

/s/ Donald Burke

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2015, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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